

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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To: AFO's and AD's

From: Assistant Director, Minerals, Realty and Resource
Protection

Subject: Military Activities On and Over the Public Lands

This Instruction Memorandum (IM) provides policy guidance to the Bureau of Land Management's (BLM) field offices. These offices receive numerous requests to authorize the use of the public lands for both State National Guard (SNG) and Federal military purposes. These uses range from small unit training, with negligible short-term impacts, to uses with significant long-term impacts on the resources and current users of the public lands. This IM is a compilation and restatement in a single document of statutory, regulatory and policy guidance that affects the authorization of military activities which may impact public lands managed by the BLM.

Attachment 1 provides supporting information on the application of the policy guidance to actual situations. Attachment 2 is a Glossary of Definitions and Acronyms.

The primary statutory foundations for this IM are the Federal Land Policy and Management Act (FLPMA), (90 Stat. 2743; 43 U.S.C. 1701, et seq.) and the Engle Act (72 Stat. 27; 43 U.S.C. 155 - 158). The primary regulatory guidance is at 43 CFR Parts 2300, 2800, and 2900.

Congress has recognized the conflicts inherent with retaining large land areas in military ranges for national purposes. With passage of the Engle Act in 1958, Congress limited the authority formerly permitted the President and the Secretary of the Interior for making lands available to the military through the process known as "withdrawal and reservation" of the public lands. This Act reserved to the Congress the authority to make withdrawals for military purposes of 5,000 acres or greater.

The FLPMA directs that the public lands be managed for "multiple use and sustained yield." This law, considered the BLM "Organic Act," retained the concept that public lands were available for other Federal agencies and departments to use through the administrative processes of withdrawal, rights-of-way and cooperative agreements (see the proviso in Sec. 302(b), and Sec. 204). Congress remained, however, sensitive to the inherent conflict between the withdrawal of public lands and the mandate for multiple use. The FLPMA placed additional restrictions on the authority of the Secretary of the Interior to make, modify, extend, or revoke withdrawals. It should be noted, however, that although FLPMA revoked many general land laws, it did not revoke the Engle Act.

The mission of the BLM and the Department of Defense (DOD) are inherently different and often conflict. It is not the role of either agency to challenge the other's mission. The U.S. Army

Corps of Engineers (COE) civil works mission area is not covered by this IM; COE civil works projects are authorized the same as any other Federal agency.

The U.S. military is currently in a period of rapidly changing requirements that impact the use of the public lands. Since a peak during the middle 1980's, the military's budget and personnel strength has been reduced by more than one-third. With significant excess in the military's property accounts, the military sought and was granted four rounds of base closures in 1988, 1991, 1993, and 1995. There is still excess capacity in the property inventory and the military has asked Congress for two additional rounds of base closures.

With "obsolete" bases being closed, many units stationed at the closed bases were relocated to the remaining bases. Additionally, military forces stationed overseas in Europe, the Philippines, and other locations around the globe, have been redeployed to the U.S. This concentration of personnel and activities is placing pressure on the remaining ranges and training areas. Additionally, increasing technology associated with weapons systems and the mobility of forces is placing significant pressure on the ranges and training areas that are large enough to accommodate these changes. Often these facilities are those with large withdrawn public land acreage or with adjacent public lands that could potentially be impacted.

The military is rapidly evolving to meet 21st century requirements. The military must be equipped and trained to engage in missions anywhere in the world from "peace-keeping" in urban areas to thermonuclear war. The pace of weapons systems development is tremendous. War-fighting strategies are

changing to more widely disbursed, highly mobile units with very long-range artillery fire. Threats now include terrorist activity and the use of weapons of mass destruction, such as chemical or biological agents, released in US cities.

In recent years, the number of new acres requested for military withdrawals is roughly equal to the number of withdrawn acres relinquished through the Base Realignment and Closure process and normal course of business actions. Some constituencies argue that the military has ample resources and should not be allowed to use additional public lands. The military finds that it must operate on a level playing field with other interests as it continues or expands its use of the public lands.

The laws of the nation and the administrative history clearly indicate that title to the public lands rests with the U.S. Government, and that these lands are a national asset under the control of Congress. Congress has indicated by statute that public lands are available for a variety of uses, including use by other Federal agencies and departments. Through FLPMA, Congress has placed the public lands under the jurisdiction of the Secretary of the Interior, to be administered by the BLM consistent with all the public lands laws and regulations.

I. GENERAL POLICY: [NOTE: Policy statements are italicized.]

A. Congress has recognized that public lands may be used by all Federal agencies and departments, including the military services, for purposes related to their mission and programs. The types of authorization and authority of the Secretary of the

Interior to grant these authorizations is, however, greatly restricted by these same statutes.

Discussion: Sec. 102(a)(4), Sec. 204, and Sec. 302(b) of the FLPMA are directly applicable. Also, FLPMA did not revoke the Engle Act of February 28, 1958. Additionally, there are a number of statutes that establish military withdrawals or continue existing military use of public lands, such as P.L. 103-433, Title VIII; P.L. 104-201, Sections 2901 and 2921; and P.L. 106-65, Title XXX.

B. Requests for use of the public lands for military activity are not given any special status. Proposals made to the BLM must be considered within the BLM's existing processes, including land use planning, compliance with the National Environmental Policy Act of 1969 (NEPA), other natural resource and cultural resource laws and Executive Orders, and standard public participation practices. The NEPA analysis must address why existing military lands can not accommodate the proposed use.

Discussion: Nowhere in the public land statutes is there any indication that Congress intends national security interests to take precedence over other land management responsibilities of the BLM. The military may, however, have other authorities under Title 10 of the United States Code which gives them authority to directly approach Congress under certain circumstances with legislative proposals to use public lands. Also, there are national security exemptions in several statutes, including the Endangered Species Act, the Clean Water Act, Coastal Zone Management Act, that may affect military service activities on public lands.

C. Requests for new withdrawal of more than 1,000 acres of public lands for military purposes must be accompanied by a signed approval to pursue this acquisition by the Deputy Secretary of Defense. This is current internal DOD policy which is subject to change. Requests for use of public lands, other than withdrawal, must be accompanied by a signed approval to pursue this action by the appropriately delegated military official.

Discussion: This policy provides that the military's own procedures for acquisition and use of non-DOD lands must be met before formal application for the withdrawal or use is submitted to the BLM.

D. Factors that must be evaluated in decision making documents include Resource Management Plan conformance, public safety, environmental effects, and effects on other public land users.

Discussion: These are the factors that are normally considered, however, public safety is a much greater concern when there is military testing or training.

E. All authorizations for military activity, except as stated in G and H below, must provide the proponent agency the minimum land area, uses, and rights necessary to accomplish the authorized activity in a safe and generally unimpeded manner, subject to valid existing rights.

Discussion: A military proposal to use public land may be in competition with other interests for the use of the land. The BLM's mission, as stated in Sec. 102(7) of FLPMA, is the management of the public lands for multiple use and sustained

yield unless otherwise specified by law. Therefore, the objective is to accommodate the use by another Federal agency, if appropriate, with minimum disruption of existing land users and minimal impacts on the environment. This statement reiterates guidance found at Departmental Manual Part 603.

F. A withdrawal should be used as an authorization only when there is no other type authorization suitable to accommodate the proposed action. However, proposed actions should not be fragmented and analyzed separately to avoid a withdrawal.

Discussion: Same as under E above.

*G. Where the military has requested that more than 5,000 acres of lands be withdrawn or where there is already an existing withdrawal for military purposes and the public lands are (1) only a small portion of the entire installation, generally 15% or less; **and** (2) the public lands are scattered in multiple parcels; BLM should, within the NEPA process, consider requesting legislation to convert these lands to real property and transferring the real property to the military, instead of requesting a withdrawal.*

Discussion: Withdrawn public lands which are inholdings in a large installation composed primarily of acquired real property may be a drain on DOI and military management resources for no noticeable gain. As a withdrawal of 5,000 acres or more and review of military withdrawals pursuant to FLPMA Sec. 204(1) must go to Congress, this provides an opportunity to convert these lands to real property and to transfer them as real property to the military. This reduces DOI's potential liability under environmental laws, if the lands continue to be withdrawn.

However, when these lands are determined to be excess to the military's needs, the DOI would still have the opportunity to acquire them during the General Services Administration screening process for excess Federal lands.

H. Any military use area, except for G above, which is likely to have unexploded ordnance, chemical munitions, or other hazardous materials, or where long-term exclusive use of a large acreage is required for public safety or national security reasons, may only be authorized for use by a public land withdrawal.

Discussion: Safety, security, and liability issues related to military munitions and special security situations can only be adequately dealt with when administrative jurisdiction of the lands is transferred from the Secretary of the Interior to the Military Service Secretary. Any form of authorization which does not transfer jurisdiction to the military service is not appropriate.

I. Land use authorizations for SNG uses do not differ from those used for any other State agency. The SNG land use authorizations will always be confined strictly to activities conducted by, or in support of, SNG units operating under the authority of the Governor of their State. However, where a SNG proposal involves explosive ordnance or chemical munitions, the proposed use may only be authorized, if at all, by a withdrawal which is requested by the U.S. Army Corps of Engineers (COE) on behalf of the SNG with either the Department of the Army (DA) or the Department of the Air Force (DAF) as the Federal agency having administrative jurisdiction over the withdrawn lands.

Discussion: The COE is the real estate agent for the DA and, in most situations, for the DAF. The COE submits the appropriate withdrawal application on behalf of the DA or the DAF. The actual withdrawal applicant and the agency of jurisdiction must be the DA or the DAF. Normally, for SNG related withdrawals, the DA is the agency of jurisdiction for the Army National Guard (ARNG) and the DAF is the agency of jurisdiction for Air National Guard (ANG). A "U.S. Property and Financial Officer" (USPFO) is assigned for each State. The USPFO is a Federal employee who holds the accountability for Federal real property, including withdrawn public domain, and licenses (through the COE) the property to the State for SNG purposes.

The COE currently is a withdrawal holding agency (administering agency) only for civil works projects and not for military testing, training or operations related withdrawals. Neither the DOD nor DOD agencies are authorized to hold real estate. Only the military service departments (Army, Navy, and Air Force) are authorized to hold real estate interests. There may be specific situations where other statutory authority applies.

J. It is not appropriate for the BLM to seek "compensation" from the military for lands withdrawn and reserved from the public domain for military use. It is appropriate for mitigation measures to be considered during the NEPA process to address the public's loss of access to and use of the resources on the public lands being withdrawn. Additionally, appropriate mitigation measures may be taken under the provisions of the Endangered Species Act, and other applicable environmental statutes. In the unlikely event that BLM public lands acquired using appropriated funds (Land and Water Conservation Fund)

or funds available from sale authorities (Southern Nevada Lands Act, P.L. 105-263; Federal Land Transaction Facilitation Act, P.L. 106-248) are to be transferred to the military, then the military service shall reimburse the BLM to the extent required by and in accordance with the Federal Property and Administrative Services Act, as amended (40 U.S.C. §471, et seq.), and General Services Administration implementing Federal Property Management Regulations at 41 CFR Part 101-47.

Discussion: As previously stated, the laws of the nation and the administrative history clearly indicate that title to the public domain rests with the U.S. Government (not the BLM or the DOI), and that these lands are a national asset under the control of Congress. Congress has by statute stated that they are available for a variety of uses, including use by other Federal agencies and departments. It is unlikely that BLM acquired lands will become part of a military installation, but if they do, the GSA regulations for real property transfers should be followed.

K. The concept of a "casual use level of activity" applies equally to Federal agencies and departments, including the military, as it does to State agencies and the private sector.

Discussion: Same as the J discussion above and further addressed in Section II, Casual Use Level of Activity, which follows this section.

L. Public lands will not normally be used for an exchange to eliminate inholdings within military withdrawals/reservations,

except where the exchange also benefits a BLM resource management program.

Discussion: Existing BLM land exchange regulations are to be followed.

M. A valid authorization for military use of the public lands in effect on the signing date of this IM may continue in effect until its expiration date, consistent with the terms and conditions of the authorization. Prior to an extension or renewal of an existing authorization, the authorization shall be brought into compliance with this IM.

Discussion: The key word is valid. There is no need to update existing valid authorizations as a result of this IM. This IM is intended to clarify and provide consistency for Field Office operations, not generate work.

N. The BLM will work cooperatively with the military to minimize any effects from the use of chaff and flares. The BLM has no legal authority to regulate the use of chaff and flares; the military use of chaff and flares above public lands is regulated by the FAA and FCC. In the environmental hazards management sense, the use of chaff and flares over public lands is considered the valid use of a product(s) for its intended purpose. [Note: See "Definitions and Acronyms" attachment for explanation of the terms "chaff" and "flares."]

Discussion: Chaff and flares, properly dispensed in accordance with military policy and procedures over public land have minimal to no impact. Improperly dispensed chaff or chaff canisters which malfunction can leave clumps of chaff on the

ground and all chaff releases leave plastic end caps that degrade at a relatively slow rate. Chaff consists of aluminum coated fiber similar in size to human hair. To be effective, chaff is normally dropped at altitudes above 12,000 feet above mean sea level (MSL) and chaff is most often carried aloft in upper level winds for great distances (hundreds of miles). Properly dispensed chaff disperses so that it is non-detectable on the ground. The most recent study on the effects of chaff concluded that, although additional study is recommended, there are no known negative environmental or health effect from the use of chaff.

Properly dispersed flares travel less distance in the upper winds than chaff and burn out prior to hitting the ground, but may leave small amounts of debris. Wildfires have been known to start from unauthorized low level use of flares.

The use of chaff and flares near Congressionally designated areas or special management areas where the lands are managed so "the earth and its community of life are untrammelled by man and where man himself is a visitor who does not remain", e.g., wilderness areas, wilderness study areas, and wild segments of wild and scenic rivers, is an area of concern. In these areas, the release of chaff and flares below the authorized altitudes could potentially cause impacts that may not be in keeping with the congressional designation of these areas.

Where chaff and flares are being dispensed in the proximity of special management areas, the impacts of improperly dispensed chaff and flares need to be considered. BLM and military cooperation is paramount in meeting the intent of Congress relative to the management of special management areas.

O. Unauthorized use of the public lands by any military unit shall be terminated as soon as possible, with appropriate restoration of resources. All incidents of unauthorized use shall be reported by Field Offices to the military commander. If resolution can not be achieved, report the incident to the BLM State Director. The State Director should take appropriate action to work with the responsible installation commander or State Adjutant General to resolve the unauthorized use and to ensure the situation is not repeated. The State Director may forward incident reports, along with any recommendations for action, to the Director (WO-350).

Discussion: Occasionally, military units use public lands without proper authorization or without compliance with stipulations in an authorization. The unauthorized use needs to be terminated as soon as possible after discovery and the lands and resources restored to an appropriate condition. BLM law enforcement has the authority to issue citations to other Federal employees; however, it is unlikely the Federal Magistrate would act on the citation and, as with other BLM unauthorized use situations, an administrative solution should be sought prior to issuance of a citation. The person cited is normally the on-site military commander or the commander at the next higher level of command.

II. CASUAL USE LEVEL OF ACTIVITY:

Not all uses of the public lands need to be authorized. Casual use level activities have essentially no impact on the environment or on other public land users. The activity is transient or of short duration and often unknown to the land manager. Most examples of casual use fall in the recreation

program area, such as small groups of individuals or a family hiking and camping, hunting, fishing, rock hounding, etc. However, when these activities become an organized event, then a permit is often necessary.

The biggest problem with applying casual use to a military situation is determining the threshold when the activity generates sufficient impacts to require an authorization. This is a subjective decision by the BLM field manager based on his/her perception of the impacts of the activity (examples of types of military casual use activities are provided in Attachment 1). The military should submit a plan of the proposed activity, reasonably in advance of the proposed start date, to the appropriate BLM office. The BLM should determine if the activity is of a casual use level in a timely manner and notify the military of its determination. In other words, the BLM should know of all military activity on BLM public lands before it occurs.

See Attachment 1, paragraph B.1. for additional discussion concerning casual use.

III. AUTHORIZATIONS AVAILABLE FOR MILITARY USE OF THE PUBLIC LANDS:

The type of authorization which may be permitted/granted or, in the case of a withdrawal, recommended by a BLM authorized officer (AO) for the military's use of the public lands is governed by the following considerations: (1) whether the authorization is to be issued to a Federal agency or to a State agency; and (2) the extent and degree/intensity of the effects of the proposed activity. Attachment 1 provides additional

information and examples in support of the following discussion.

A. The types of authorizations available to military organizations are:

1. Federal military agencies: Authorizations for the use of BLM-managed public lands by the armed forces and the reserve components of the armed forces of the U.S. and their auxiliaries are issued to the Federal military agency.

a. Based on the Section 302(b) and Section 302(d) of FLPMA, only the following authorizations may be used to allow use of the public lands by Federal agencies:

(1) In Alaska, permits to a Federal military department may be issued under Section 302(d) of FLPMA. (NOTE: FLPMA was amended by the Act of November 3, 1988; P.L. 100-586).

(2) Rights-of-way (R/W) under Section 507 of FLPMA (NOTE: A R/W may not be used for a military maneuver area; see Department of the Army 95 IBLA 52, December 1986).

RADAR, LIDAR, telemetry, or similar systems used for air traffic control, aircraft warning and control, tracking of test objects, tracking of training missions, simulated enemy radar, weather forecasting, or any other military use of these type systems is normally authorized using a communication site R/W.

(3) Cooperative agreements under Section 307 of FLPMA, where the proposed use and development are similar or closely related to the programs of the Secretary of the Interior for the public lands involved. Search and Rescue (SAR) is often

considered casual use, but Combat Search and Rescue (CSAR) exceeds casual use guidelines. Both of these types of training and safety buffers which are used intermittently, such as for missile launch operations, may be suitable for authorization using a cooperative agreement.

(4) Public land withdrawals under Section 204 of FLPMA.
(NOTE: This authority is restricted by the Engle Act which states that "any withdrawal of more than five thousand acres in the aggregate for any one defense project or facility of the Department of Defense since the date of enactment of this Act [February 28, 1958] or since the last previous Act of Congress . . . for that project or facility, whichever is later," may only be made by an Act of Congress.)

b. Authorizations for the use of BLM-managed public lands by Army National Guard of the United States (ARNGUS) and Air National Guard of the United States (ANGUS) units and personnel serving on active duty in the armed forces of the U.S. must be through the appropriate Federal military agency as provided for under, and subject to, the provisions of III.A.1.a. above.

c. The armed forces and the reserve components of the armed forces (including ARNGUS and ANGUS units and personnel on Federal active duty) of the U.S. and their auxiliaries are not authorized to use SNG training and operational areas on BLM-managed public lands, except lands withdrawn for military purposes, for maneuver or combat exercises, weapons testing or firing, motor pools, bivouacs, or any other use, similar or dissimilar, without first obtaining an appropriate land use authorization as provided in III.A.1.a. above.

d. Notwithstanding b or c above, active duty personnel of the armed forces and the reserve components of the armed forces of the U.S. and their auxiliaries providing discrete and essential support services to SNG units on either an individual or small unit basis for limited periods of time may operate on a SNG authorization for the use of BLM-managed public land at the discretion of the BLM AO. Examples include instructors/advisors, medical teams, communication technicians, and very small (platoon size (40) or less) aggressor force units that are essential to the proper conduct of SNG training exercises lasting no more 14 days.

2. Foreign military forces: When the proposed use includes foreign military forces, the proposal must be considered as a Federal agency proposal and processed accordingly. The application is filed by a sponsoring Federal military agency. It is assumed that foreign military forces would not be authorized to train on U.S. soil unless they were invited and authorized by the Federal government.

3. State military departments or agencies: Authorizations for the use of BLM-managed public lands by the State military departments or agencies are issued only to the State agency which has the legal authority to hold real estate interests for the SNG. The following authorizations may be used to authorize use of the public lands by State military departments or agencies:

- a. Permit and lease under Section 302(b) of FLPMA.
- b. Rights-of-way under Title V of FLPMA.
- c. Cooperative agreements under Section 307 of FLPMA.
- d. Public land withdrawals under Section 204 of FLPMA or legislative withdrawals (see I.I. above) held by a Federal agency

for the benefit of the State military department or agency.

e. Lease or patent under the Recreation and Public Purposes Act as amended (43 U.S.C. 869, et seq.).

f. SNG units and personnel may use Federal military authorizations for the same purposes without further authorization.

4. The Coast Guard is part of the Department of Transportation and when requesting the use of public lands, the Coast Guard is considered the same as any other Federal agency. In times of emergency, the Coast Guard can be activated as part of the US Navy. When part of the Navy, the Coast Guard is considered in the same manner as the Navy.

B. Determining the appropriate authorization to use:

1. The BLM AO first determines whether the proponent agency and forces proposing to use the public lands are Federal or SNG.

2. Then the AO analyzes the proposed use to determine the type of authorization which would provide the military agency with the authority and control necessary to carry out its activities in a reasonably safe and generally unimpeded manner, while maintaining as much use by other public land users as is feasible. Considerations should include:

a. Safety considerations for the public and BLM employees.

b. Effects on the environment.

c. Effects on other public land users.

d. Feasibility of reclaiming the lands and the associated costs.

e. Duration of the authorization and whether the use is

continuous or intermittent.

f. Such other factors as the AO may deem to be relevant.

C. Decision process: When the AO has determined which authorization is most appropriate, the standard BLM processes and policies leading to a decision whether to authorize the proposed activity are to be followed; however, for withdrawals subject to the Engle Act, the AO is making a recommendation to the Secretary as to whether and under what conditions the withdrawal should be made.

IV. PLANNING AND ENVIRONMENTAL DOCUMENTATION:

Compliance with the NEPA, including Sec. 7 Endangered Species Act consultation, Sec. 106 National Historic Preservation Act consultation and Native American consultation, will be accomplished for both the BLM authorizing action and the military implementing action through a single environmental analysis and documentation (whether this be an environmental assessment (EA) or an environmental impact statement (EIS)) process. The BLM and the military agency applicant will determine which agency will be the lead agency for the NEPA documentation and the roles and responsibilities associated with this analysis, and memorialize determinations in an MOU. Normally, for withdrawals and other major actions, the military will be the lead agency for the NEPA analysis, with the BLM as a cooperating agency. Where there is a mix of proposed action, i.e., withdrawal, rights-of-way, plan amendment, cooperative agreements, a joint lead may be appropriate.

For State military agency authorizations, the BLM will normally be the NEPA lead agency.

The BLM is the lead agency for any land use plan amendments and associated NEPA analysis, and any other BLM specific requirements. BLM must ensure these requirements are adequately covered in the environmental analysis and documentation.

If the BLM is not a cooperating agency or joint lead for a military NEPA document supporting a BLM authorization to use public lands, the BLM will follow the normal Council on Environmental Quality process for adopting, supplementing, or redoing the military's NEPA analysis to DOI standards.

As the proposed action is for use of BLM-managed public lands, the BLM planning and NEPA processes prevail whenever there is a conflict between BLM and military procedures.

Any military proposal for use of the public lands must contain, at a minimum, (1) a complete and detailed description of the proposed action; (2) a clear statement of purpose and need for the proposed action; (3) a summary of the screening process or analysis of existing or proposed DOD lands, facilities, and withdrawals which have been considered and determined not viable; and (4) reasonable alternatives to provide management with options to consider. Applications shall also contain any additional information required by applicable regulations.

In the case of an EIS for a military proposal for use of the public lands, a memorandum of understanding (MOU) or other agreement must be prepared and signed by the BLM AO and the

military to guide the EIS preparation process and schedule and, if appropriate, the land use plan preparation and implementation (BLM H-1790-1, pages III-6 and -7). An MOU may also be used for preparation of EAs. Cost reimbursement by the military proponent is appropriate for BLM expenses incurred in developing the MOU, scoping, data collection, preparation and review of NEPA documents, and other processing costs.

A pro-active scoping process to identify issues and refine alternatives is the key to an effective NEPA process. A joint military and BLM process for scoping is required to properly focus the NEPA effort.

The affected lands must remain available, if possible, for other multiple use activities as established by land use planning. The BLM AO must confer with the military when considering proposals to ensure compatibility. Where withdrawals are necessary, but other public uses (e.g., grazing, recreation, or mineral leasing) can continue, the provisions allowing such use must be set forth in the public land order or statute. (NOTE: See Attachment 1 B.6.d.(1))

As with all proposed Federal actions, NEPA mandates that the analyses for military proposals incorporate connected actions and include a discussion of cumulative impacts. Understanding cumulative impacts is a key feature of NEPA documents prepared for proposed military actions that may include multiple land parcels, airspace components, and a variety of ancillary facilities, such as communications sites, roads, power lines, etc. For example, the environmental analysis for a proposed action involving a military flying unit may include discussion of potential impacts to a main operating base, remote bombing

ranges, electronic warfare sites, telemetry sites, airspace, and other components such as roads, power lines, and communications lines.

If the proposal is not in conformance with the land use plan, but has merit, a plan amendment should be prepared to incorporate the proposed military land use, either concurrently with the NEPA documentation for the proposed action or to implement of the record of decision associated with the proposed action. Where the proposal is not in conformance with planning and is not justified, the proposal will be denied or, in the case of a withdrawal application, a negative recommendation shall be prepared. The military service would then have the option of initiating dispute resolution (see section X).

There should not be competing resource management plans for withdrawn lands. Unless otherwise directed by Congress, natural resource management responsibilities are as follows:

A. Where the withdrawal order or statute assigns resource management to the Military Service Secretary or is silent, the military will prepare an integrated natural resource management plan (INRMP) pursuant to the Sikes Act, as amended (16 U.S.C. 670a et seq.). Any additional plan requirements of the BLM must be addressed in a supplement to this plan, funded by the BLM, and consistent with the intent of the withdrawal.

B. Where the withdrawal order or statute assigns resource management to the Secretary of the Interior, a FLPMA resource management plan (RMP) will be prepared jointly by the BLM and the military service. Any additional plan requirements of the military service must be addressed in a supplement to this plan,

funded by the military service, and consistent with the BLM RMP.

The INRMP or RMP establishes resource coordination objectives, allowable uses, and management practices to be followed by the BLM and the military. For lands with dual administrative responsibilities, specific responsibilities for processing public use authorizations should also be established through planning.

Where military use of public lands which are not withdrawn is significant or controversial, the BLM may, as a condition for authorizing the use, require the military to carry out specific mitigating actions and conduct scheduled monitoring of such mitigating actions. Such monitoring information must be reported by the military entity and delivered to the BLM AO as required in the authorization document. At the discretion of the BLM AO, such reports may be published for public distribution.

Where an opportunity presents itself for a broader ecosystem or landscape planning approach, there should be consideration of forming a coordinating group and, as much as feasible, integrate planning efforts. Current examples of this approach toward coordinated planning are (1) Barry M. Goldwater Range, Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National Monument and adjacent BLM public lands and (2) Nellis Air Force Range, Desert National Wildlife Range, Nevada Test Site and adjacent BLM public lands.

V. STEWARDSHIP

Both the military and the BLM have a stewardship responsibility on all public lands the military is authorized to use. This relationship needs to be delineated in each situation, so the parties know who is responsible for what. Stewardship of the public lands and resources used by the military is very situational and does not lend itself to broad generalizations.

For authorizations other than a withdrawal, usually all stewardship responsibilities remain vested with the BLM, unless specifically given to the military. The military is responsible for conducting its training or testing within the terms and conditions of the authorization, preventing any undue impacts on the resources, and restoring any damaged lands and resources.

Fire management responsibility may rest with either the BLM or the military. Commonly BLM and military installations have close working relationships concerning wildfire prevention, suppression, and rehabilitation. Working relationships include mutual aid agreements and/or agreements in which the military provides additional funding to the BLM for fire related activity. These agreements can specify requirements such as drop altitudes that exceed those recommended by the manufacturer for the dispensing of flares during fire season or in the proximity of special management areas.

When jurisdiction over withdrawn lands is transferred to a Military Service Secretary, the stewardship responsibilities for all non-mineral resources are also transferred, unless there is specific public land order, Executive order, or statutory language that provides for management of some or all of the resources by another Department or agency. The Engle Act is an example of a law which states all mineral resources on Federal public lands or

acquired lands are under the jurisdiction of the Secretary of the Interior and administered by the BLM, unless specifically stated otherwise in an overriding statute. Another statutory example where responsibility is not transferred is the Fish and Wildlife Service's authority under the Endangered Species Act.

When developing a new withdrawal order, consideration will be given to the effectiveness and efficiencies of joint stewardship. Items to consider are:

- A. BLM's ability to access the withdrawn lands.
- B. The percentage of withdrawn lands versus acquired lands at the installation, e.g., the lower the percentage of withdrawn lands, the less reasonable it is to have BLM managing resources at the installation.
- C. Availability of personnel, e.g., staffing levels, funding, and workload of both BLM and military installation in the area.
- D. Special situations, e.g., a wild horse herd on the installation.
- E. Safety issues related to munitions and military training.

Joint stewardship policy guidance is being developed by the Interagency Military Land Use Coordination Committee (IMLUCC) and, as appropriate, will be issued as a change to this IM.

VI. RESOURCE PROTECTION

The military is responsible and liable for all environmental damage caused by its actions and the actions of its contractors. The military is responsible and liable for all environmental damage which occurs on withdrawn lands, whatever the source, where the military has administrative jurisdiction. As mentioned

in the Stewardship section, fire prevention, suppression, and rehabilitation are often addressed in mutual aid agreements and/or other agreements between the BLM and military. These types of agreements need to address resource protection and specifically wildfire caused by military activity that burns public lands. The improper dispensing of flares has caused fires in the past. If appropriate agreements are in place, the suppression of these fires and the resultant rehabilitation can be accomplished jointly between BLM and the military. If agreements are not in place, BLM will bill the military for suppression and rehabilitation costs.

Additional guidance concerning resource protection is being developed for the IMLUCC and, as appropriate, will be issued as a change to this IM.

VII. CLOSURE OF PUBLIC LANDS

There should be no closures of public lands without proper authorization, except in emergency situations, e.g., downed aircraft. The military's need to close or evacuate public lands for safety or security reasons should be covered by an appropriate authorization. Where the likelihood exists for emergency closure, an MOU between the local installation and the local BLM office should be prepared. Emergency closures must be coordinated with BLM law enforcement and managers as soon as possible.

VIII. OVERFLIGHTS AND AIRSPACE

A. The Federal Aviation Administration (FAA) regulates the "National Airspace System" and may designate Special Use

Airspace above public lands for use by the military. Special Use Airspace (SUA) is designated in accordance with the procedures in the FAA Regulations and FAA Handbook 7400.2C Procedures for Handling Airspace Matters.

B. Most airspace proposals above BLM-managed lands are subject to the review of the BLM and must comply with the provisions of the NEPA. An example of an exception to BLM's review of NEPA documentation would be a commercial air corridor above 18,000 feet above mean sea level (MSL).

C. The Bureau's airspace policy may be summarized as:

1. When the BLM is making resource management decisions on the ground, it will consider how these decisions will affect allocated airspace above these resources.

2. Proponents of changes in the allocated airspace above public lands will consider the effects of their proposed change on the public lands below the airspace. It is incumbent upon BLM managers to work with military and civilian aviation offices to manage the effects of overflight of the public lands. The NEPA analysis should include cumulative impacts of related activities, such as discussion of target ranges, ground facilities simulating enemy fire, etc.

D. The INTERAGENCY AIRSPACE COORDINATION GUIDE published by the DOI and USDA is the principal airspace guidance document for BLM managers. BLM coordination with the military on airspace issues is accomplished:

1. Locally with the military representatives at the FAA Regional Headquarters, by attendance at the Air Force Region Airspace/Ranges Management Council meetings, and with installation commanders and base air operations personnel.

2. Nationally with participation in the Interagency Airspace/Natural Resources Coordination Group (IA/NRCG) and the IMLUCC's Overflight Workgroup.

E. The BLM Fire and Aviation Offices are assigned the lead role for overflight and airspace issues. It is imperative that these offices actively seek inclusion of natural resource specialists when overflight and/or airspace activity has an affect on natural or cultural resources managed by the BLM, as well as an affect on the users of the public lands.

F. The BLM is generally responsible for emergency and disaster management on BLM-managed lands. As such, it may be necessary, from time-to-time, for BLM to request a "Temporary Flight Restrictions" (TFR) designation from FAA for a portion of national airspace where wildland firefighting, disaster relief, or law enforcement activities are in progress. All TFR's will be established and disestablished by FAA as provided in Federal Aviation Regulation 14 CFR Part 91. Upon notification of a TFR activation, the military will take immediate action to clear the affected airspace of military aircraft, regardless of previous allocation of the airspace.

G. Hazards to Air Navigation:

1. Allocated Airspace: The BLM will not permit the erection of hazards to air navigation on public lands which affect allocated

airspace nor uncontrolled navigable , without appropriate approval by the FAA (14 CFR 77.13).

2. Construction activities: The BLM will consider the existing use of overlying airspace when reviewing requests and plans for construction. All planned structures higher than 199 feet above ground level require an obstruction evaluation as prescribed by the FAA. A copy of this evaluation is to be provided by the applicant. Structures 199 feet or less in height may be erected into uncontrolled or unallocated airspace only after review and due regard for the safety of air traffic, including general aviation activity, commercial traffic, and military traffic.

3. Airports/Airfields: In no case will BLM permit the erection or renewal of a structure on BLM-managed lands which adversely affects an airport traffic area, transition area, or approach and departure corridor.

IX. COST REIMBURSEMENT:

Cost reimbursement is generally appropriate for studies, reports, NEPA documentation, resource management planning and other actions directly related to processing an application for a military purpose. (NOTE: See 43 CFR 2310.3-2, 2920.6, and 2808; BLM Manual Sections 1323 and 1681.16D; and BLM Handbook H-1790-1.)

X. DISPUTE RESOLUTION

The missions of the BLM and DOD are inherently different and often conflict. It is not the role of either agency to challenge the other's mission. The BLM and the military must work to identify areas of potential conflict and to recommend solutions to the

conflict. Differences in the military and the BLM organizational structures makes cooperation and coordination at the local level the easiest way to resolve issues. It is not in the interest of the BLM nor the military to procrastinate when making tough decisions concerning the military's use of public lands.

When either party recognizes an issue is not resolvable at a BLM Field Office/military installation command level, the issue should be moved to the next higher level within forty-five days. This movement of the issue to successively higher management/command levels will continue until a resolution can be reached. A request for the resolution of an issue that will have DOD-wide and/or nation-wide impact may be forwarded through the Director to the Assistant Secretary, Land and Minerals Management for consideration by the IMLUCC.

When the BLM AO is presented with information beyond his/her or their staff's level of expertise during considering an application for an authorization, the AO should confer with the BLM State Office and Washington Office. If resolution is not achieved, the services of a neutral third party, acceptable to both the BLM and military, should be engaged.

XI. PUBLIC AFFAIRS:

Military proposals to use public lands may be controversial. A public affairs plan is necessary to inform the public of the proposal and the process leading to the decision to authorize or reject the proposal. This plan must determine the specific responsibilities of the BLM and the military and which party possesses the expertise to assume lead responsibilities in preparing and implementing the public affairs plan. The public

affairs plan can be a separate document or be incorporated into the project MOU between the BLM and military. In addition, public participation is necessary in the NEPA and resource management planning processes and all activity must be coordinated with specific responsibilities well defined. The military agency and the BLM should both be represented in any public arena where the land use proposal is subject to discussion.

Because the missions of the BLM and military services are different, coordination and cooperation between the agencies is imperative. Differences in organizational structure complicates this coordination. While BLM is organized geographically, the military services are organized functionally.

XII. CONGRESSIONAL AFFAIRS:

Any contact or coordination with a member of Congress, staff or Committee will be coordinated with BLM Washington Office, Legislative Affairs WO-260. Any meetings with Senators, Representatives or their staffs and congressional Committees will normally include representation of both the BLM and the military service proponent. If an office is requested by a Senator or Representative to draft legislation, the response must be cleared through the appropriate BLM State and Washington Congressional Affairs Offices.

The military service, as the proponent agency, often takes the lead for congressional contacts. The BLM must coordinate closely with the military to ensure the BLM has representation, as appropriate, at these meetings.

XIII. EFFECTIVE DATE AND VALID EXISTING AUTHORIZATIONS:

This IM becomes effective upon issuance. All valid existing authorizations remain in effect under the current terms and conditions until their expiration or renewal date, at which time any reauthorization is subject to this memorandum.

XIV. COORDINATION AND POINT OF CONTACT:

The BLM Washington Office Lands and Realty Group (WO-350) is the primary coordination office for policy related to military use of the public lands. The BLM point of contact within WO 350 is Dwight Hempel, Senior Specialist for Military Liaison, (202) 452-7778, <dwight_hempel@blm.gov>.

Signed by:

Carson W. Culp

Assistant Director

Minerals, Realty and Resource Protection

Authenticated by:

Barbara J. Brown

Policy & Records Group, WO-560

2 Attachments

- [1 - Military Activities on the Public Lands \(10 pp\)](#)
- [2 - Definitions and Acronyms \(6 pp\)](#)